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# Equal Employment Opportunity For Supervisors

**Jennifer S. Thompson**  
**Director**

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***Our mission is to provide the commander and the Fort Leonard Wood community with timely, professional service and advise on all EEO matters relating to effective and efficient utilization of civilian resources while promoting, fostering and growing cohesive organizations that focus on the Seven Army Core***

***Values,***  
*We are the Army's Home*



# Agenda

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- Leadership Responsibilities
- MD 715 Strategic Initiatives
- Complaints
- ADR/Mediation
- Disability and Reasonable Accommodation
- Leadership Takeaways



# Leadership and EEO

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- Do the right thing
- Make decisions based on merit and ability for legitimate, non-discriminatory reasons
- Be diligent in carrying out your duties, free of discrimination, even when faced with an EEO complaint



# Leadership and EEO



- Practices for a healthy work environment
  - Open and honest communication
  - Provide Training
    - EEO
    - Disability and Reasonable Accommodation
    - Anti-Harassment/Sexual and Non sexual
    - Sexual Harassment/Assault Response Program (SHARP)
- Ensure a professional, respectful work place
- Respect the integrity of the EEO process
- Use Resources (EEO, CPAC, Legal)



# Management Directive



715

## Essential Elements of a Model EEO Program

- **Commitment** from agency to leadership
- **Integration** of EEO into agency strategic mission
- **Management and Program Accountability**
- **Proactive Prevention** of unlawful discrimination
- **Efficiency**
- **Responsiveness** and legal compliance



# MD 715 Strategic

## Initiatives

### Commitment

#### **Policy Letters, Posters, EEO website**

(Signed by current commander, given to new employees and newly promoted supervisors)

### Accountability

Evaluate supervisors on efforts to ensure equality of opportunities (hiring/promotions/awards/punishments/requests for accommodations)

### Integration

Attracting, developing and retaining the most qualified workforce

### Efficiency

Maintain a fair and impartial complaint resolution process  
Encourage Alternate Dispute Resolution

### Proactive Prevention

Ongoing obligation to ensure and maintain a workplace free of discrimination/harassment

### Responsiveness

Ensure Agency is in full compliance of regulations, laws, directives and timelines



# EEO Complaints

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- What do you do if faced with an EEO Complaint?
- What are your responsibilities as a Manager/Supervisor?
- What can you do to prevent EEO complaints?



# EEO Complaints



- Don't take it personal
- Discuss the concern with SJA, EEO, CPAC not co-workers or subordinates
- Seek resolution to the “root cause”
- Do your best to maintain a respectful workplace





# Cost of Complaints



Processing and resolving just one complaint costs at Least \$50-\$77k, sometimes up to \$100 thousand (excluding monetary awards)

Pre-complaint	\$10 - \$15k
Accept/Dismiss	\$7 - \$10k
Investigation	\$13 - \$20k
EEOC Hearing	\$15 - \$25k
Final Agency Decision	\$1 - \$2k
Compliance and Oversight	\$3 - \$5k

**Average total Cost                      \$50 - \$77k**

**Average total time: 2+ years**



# Benefits of ADR

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- Saves money and time
- Some control over the outcome
- Keeps focus on the mission
  - Faster resolution
  - Less work hours expended
  - Fewer steps in the process
  - Collaborative outcome



# Definition of ADR



- ADR is a program that offers a variety of informal problem solving techniques and is typically used Instead of the EEO complaint process.
- Examples of ADR include negotiation, facilitation, Mediation, binding arbitration, and fact finding.

**Army's preferred ADR method is mediation**



# ADR Principles



ADR programs should fit the environment and Workforce, but at the same time must be fair and conform to the following core principles:

- ✓ Voluntariness
- ✓ Neutrality
- ✓ Confidentiality
- ✓ Enforceability



# Definition of Mediation

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**Mediation** is a process of working out differences  
Between two people or parties, with the help of a  
Third person, called the mediator.



# Mediation – Complainant

## Points for Consideration



- Mediation has several positive benefits for the complainant
  - ✓ Treated fairly and with respect during the mediation
  - ✓ Time to voice concerns
  - ✓ Influence resolution
  - ✓ Early and satisfactory resolution
  - ✓ Does not lose or give up rights within the EEO process



# Mediation – Management

Points for Consideration



- Mediation has several positive benefits for managers
  - ✓ Improves morale
  - ✓ Reduces blame – focuses on resolution
  - ✓ Fosters improved relationships
  - ✓ Non- precedent setting
  - ✓ Issue gets resolved



# The Mediation Process



- How Mediation Works
  - ✓ Mediation offered
  - ✓ Representative with settlement authority selected
  - ✓ Mediation scheduled with a neutral third party
  - ✓ Mediator controls process





# The Mediation Process



- Participating in Mediation
  - ✓ Mediators sett the ground rules
  - ✓ Open dialog
  - ✓ Caucus – separate meetings
  - ✓ Seek points of agreement



# The Mediation Process



## Desired Outcomes

- Parties agree on resolution
- Mediator captures solutions in a Negotiated Settlement Agreement (NSA)
- A well written NSA includes:
  - ✓ Simple clear language
  - ✓ Language that does not place blame or fault
  - ✓ Specifics as to who will be responsible for each action
  - ✓ Specifics regarding times for each identified action to be completed
  - ✓ Solutions that are realistic and can be achieved
- NSA must be coordinated with EEO, Legal, and Civilian Personnel (CPAC) before signing



# The Mediation Process



## Negotiated Settlement Agreements

- Signed by all parties
- Binding and enforceable contract
- Closes complaint permanently
  - ✓ Exception – if agreement is broken, complaint can resume
  - ✓ Note: If there is a monetary settlement; provide a copy of the agreement to your budget analyst for timely processing



# The Mediation Process

## ADR Take Away Points

- Effective and efficient
- Foster trust
- Improves Morale
- Saves time and money
- Controlled, collaborative outcome
- Return focus to mission



# Disability and Reasonable Accommodation



## Overview

- Objectives:
  - ✓ What is a disability?
  - ✓ When and how you should provide reasonable accommodation?
  - ✓ Requests for medical information
  - ✓ Common mistakes to avoid
  - ✓ Practical information



# Points to Consider

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- Increasing numbers of individuals with disabilities in the workplace
- Returning veterans as new federal employees
- Many Department of the Army allegations of discrimination cite disability as a basis
- Many disabilities are not obvious



# What is a Disability?



According to the EEOC, a Disability is a physical or mental impairment that substantially limits one or more of a persons major life activities

Why is this important?

- ✓ Because the law says that as an employer, the government must provide reasonable accommodation to qualified employees and applicants with disabilities



# What is a Reasonable Accommodation?



Modifications and adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enabled a qualified individual with a disability to perform the essential functions of the position





# Qualified Individual

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An individual with a disability who satisfies the requisite skill, experience, education and other job related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position



# Essential Functions



- Examples of possible essential functions
  - ✓ Ability to follow instructions
  - ✓ Ability to show up for work regularly
    - Waggoner v. Olin Corporation
  - ✓ Ability to be punctual or on time
    - Williams v. James (OPM)
  - ✓ Ability to maintain a security clearance
    - Blankenship v, Martin Marietta Energy Systems
  - ✓ Employees with disabilities must work the same as all other employees



# Reasonable Accommodation

If a person with a disability is otherwise qualified to perform the essential functions of the job, the employer should, unless they can prove that making the accommodation would cause undue hardship, make a reasonable workplace accommodation.



# Reasonable

# Accommodation

A reasonable workplace accommodation allows the employee with the disability to perform at the same level of effectiveness and efficiency as any other qualified non-disabled employee



# Examples of

# Accommodation

- Making facilities accessible
- Modifying work schedule
- Providing computer software such as voice recognition
- Adjusting or modifying examinations and training materials
- Printing materials with large print



# Bad Examples of Accommodation



- Light Duty/Less work
- More paid leave
- Change of supervisor
- Less stress



# Reasonable Accommodation Request Process

- Employee must make the request to their supervisor (verbal/written)
- Supervisor should address the subject directly with employee (**coordinate** with EEO, CPAC and SJA **before** rendering a decision)
- Start an “interactive process”
- Do not assume to know what type of accommodation is required
- Reasonable accommodation often involves little effort or expense
- An employee should have an answer in 30 days



# Discussing Disabilities



- Do not ask the employee about his/her disability!
- Employees must ask for the accommodation
- Disability information shared with managers and supervisors should be in strict confidence
- Medical information should not be stored with the employee's personnel file

Do not be intimidated when threatened with EEO complaints, grievances or MSBP actions





# Mental Disabilities



Mental and Emotional problems are also considered

- Clinical Depression
- Treatment for Alcoholism
- Post Traumatic Stress Disorder (PTSD)



# Safety Threats



- Must show a direct threat
- Burden of Proof is on the employer
- Specific risk
- Is risk significant?
- Is harm imminent?
- What were the results of the interactive process
- Last resort



# Making Wise Disability Choices



- Be fair and reasonable to employees
- Do the right thing
- Treat each issue/request on a case-by-case basis
- Don't make a mountain out of a molehill (Don't take it personal)
- Coordinate with EEO, CPAC and JAG before rendering a decision



# Common Pitfalls



- ✓ Asking the employee about their disabilities
- ✓ Asking to see medical proof without checking with EEO and CPAC
- ✓ Making the decision yourself about the medical documentation
  - ✓ “My son-in-law takes Zydol, and I know...”
- ✓ Not respecting the strict legalities and nature of confidentiality
  - ✓ “Did you know that Snoopy has a learning disability?”
  - ✓ All medical information should be stored in locked files separated from personnel records



# Common Pitfalls



- ✓ Making every request into a major legal issue
  - ✓ “You don’t need a wrist pad. You aren’t qualified...”
- ✓ Going after the person with a disability or someone who filed an EEO complaint
- ✓ Being in-subordinate to the chain-of-command
  - ✓ “I’m not doing anything for them...”
- ✓ Being too helpful
  - ✓ “Oh you poor thing, let me help you...”
- ✓ Not listening to the employee
  - ✓ “I know what you need for an accommodation. My uncle has one of these...”



# Learning Summary



- ✓ A person must be able to perform the essential functions of the job
- ✓ To no extent does a disability prevent an employer from enforcing conduct rules or appropriately address poor performance
- ✓ Remember, the request for a Reasonable Accommodation requires an Interactive approach between the employee, supervisor (authority to make decision), Disability Program Manager (EEO), CPAC, SJA, Safety, and Occupational Health



# Key Points to Remember



- Remain calm and unemotional (Don't take it personal)
- Most reasonable accommodation requests cost under \$500.00
- Computer related and electronic equipment is centrally funded through The Department of Defense Computer Electronic Accommodations (CAP) Program: <http://www.tricare.osd.mil/cap/>



# Leadership Takeaways



- ✓ Increasing number of accommodation issues
- ✓ Disability is becoming a primary basis for EEO Complaints
- ✓ Employee must approach you with an accommodation request
- ✓ Use the interactive approach
- ✓ Coordinate with EEO, CPAC and SJA before rendering a decision for an accommodation
- ✓ Treat each request individually and confidentiality to the best extent possible
- ✓ Don't take it personal





# PRE-COMPLAINT (INFORMAL) ACTIVITY



	FY 10	FY 11	FY 12
Contacts		12	24
Completed Counseling	37	38	40
ADR offered by agency	29	29	37
Rejected by Aggrieved	15	16	16
Total accepted into ADR	12	17	21
Settlements	7	6	6
* ADR Monetary	1	0	0
* ADR Non-monetary	7	6	6
* Non-mediation Monetary		1	0
* Non-mediation Non-monetary			
Formal Complaint filed (after ADR -no settlement)	6	3	22



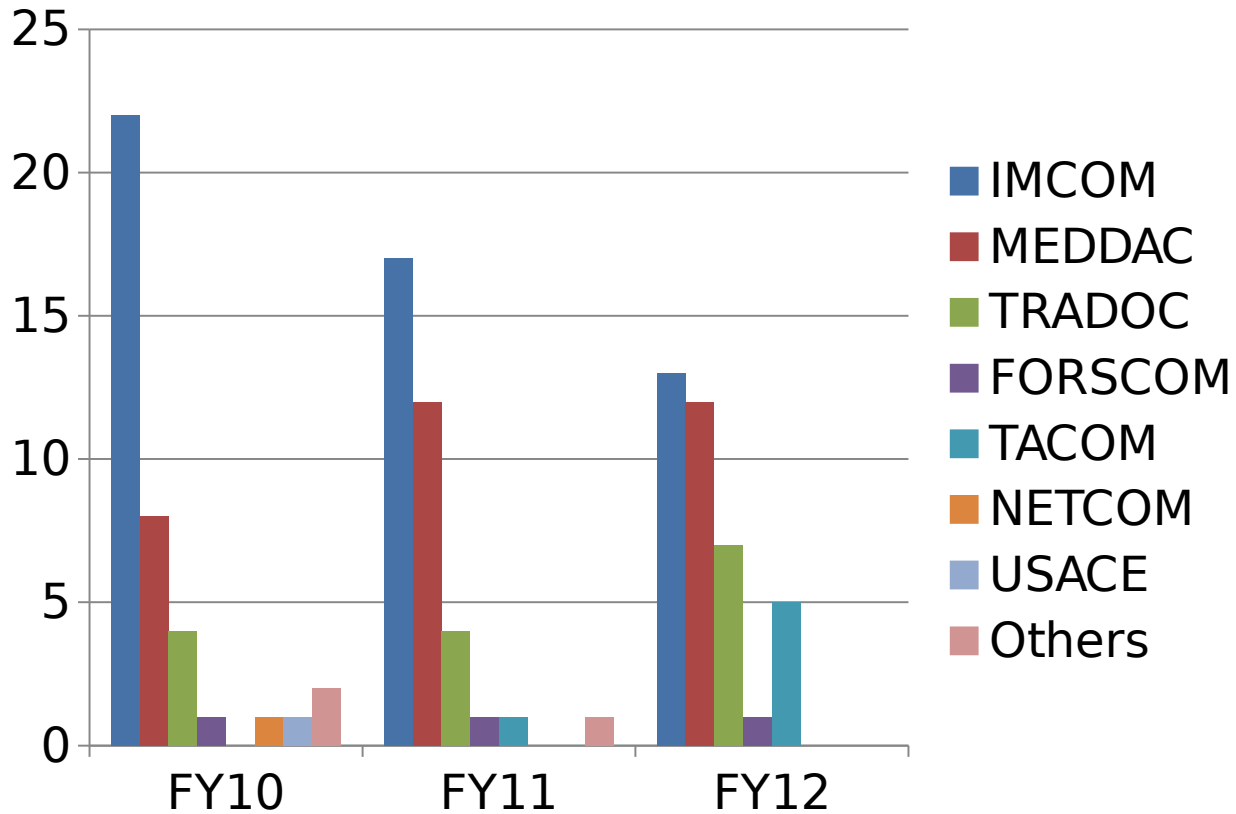
# FORMAL COMPLAINT ACTIVITY/ADR



	FY 10	FY 11	FY 12 to date
Cost of Investigations		\$7,063.01	7,908.74
Formal Complaints Filed	19	20	22
Remands	1	2	3
Withdrawal/No complaint filed	0	10	12
Total accepted into ADR	10	10	3
Settlements	7	7	3
* ADR Monetary			1
* ADR Non-monetary	7	7	2
Investigations completed	0	7	7
Formal Complaint filed (after ADR -no settlement)	6	3	0



# PRE-COMPLAINTS BY COMMAND





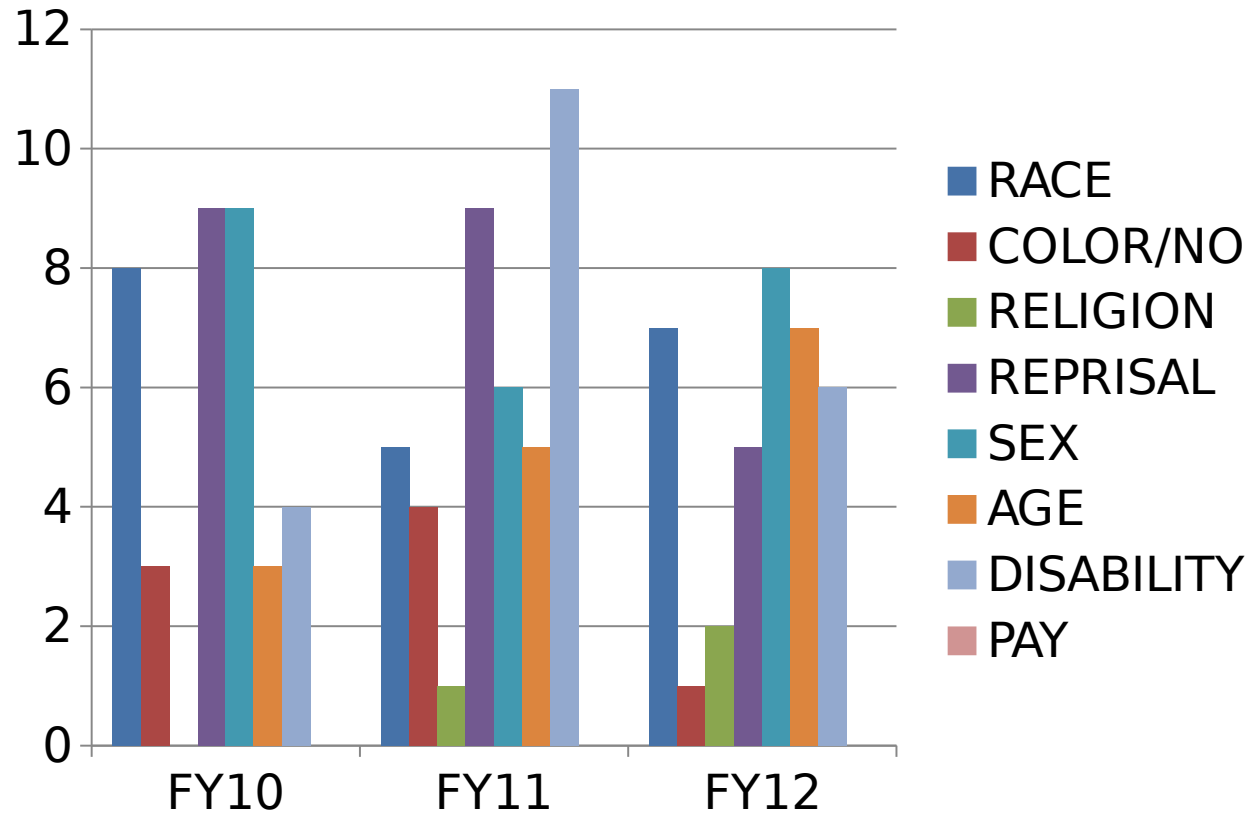
# FORMAL COMPLAINT ACTIVITY/ADR



	FY 10	FY 11	FY 12 to date
Cost of Investigations		\$7,063.01	7,908.74
Formal Complaints Filed	29	20	22
Remands	0	2	2
Withdrawal/No complaint filed	0	10	12
Total accepted into ADR	10	10	3
Settlements	7	7	3
* ADR Monetary			1
* ADR Non-monetary	7	7	2
Investigations completed	0	7	7
Formal Complaint filed (after ADR -no settlement)	6	3	0

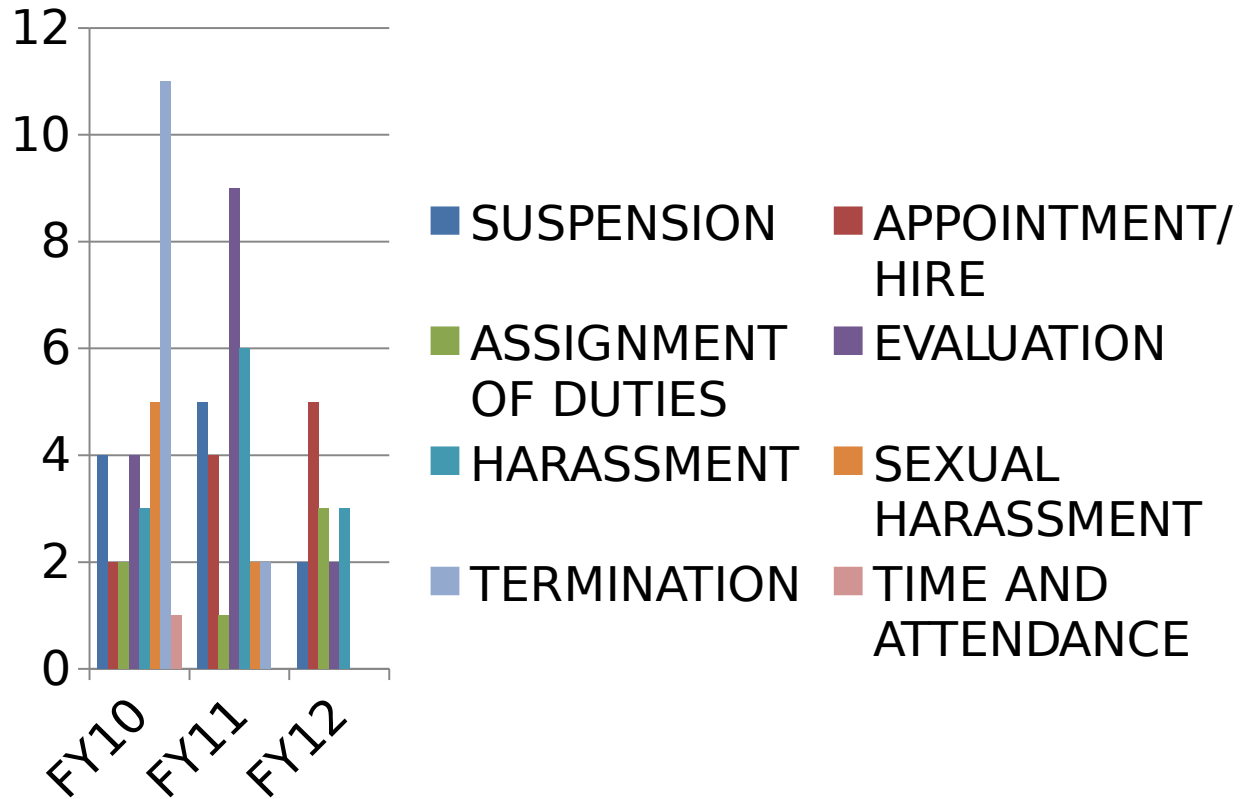


# BASIS FOR FORMAL COMPLAINTS



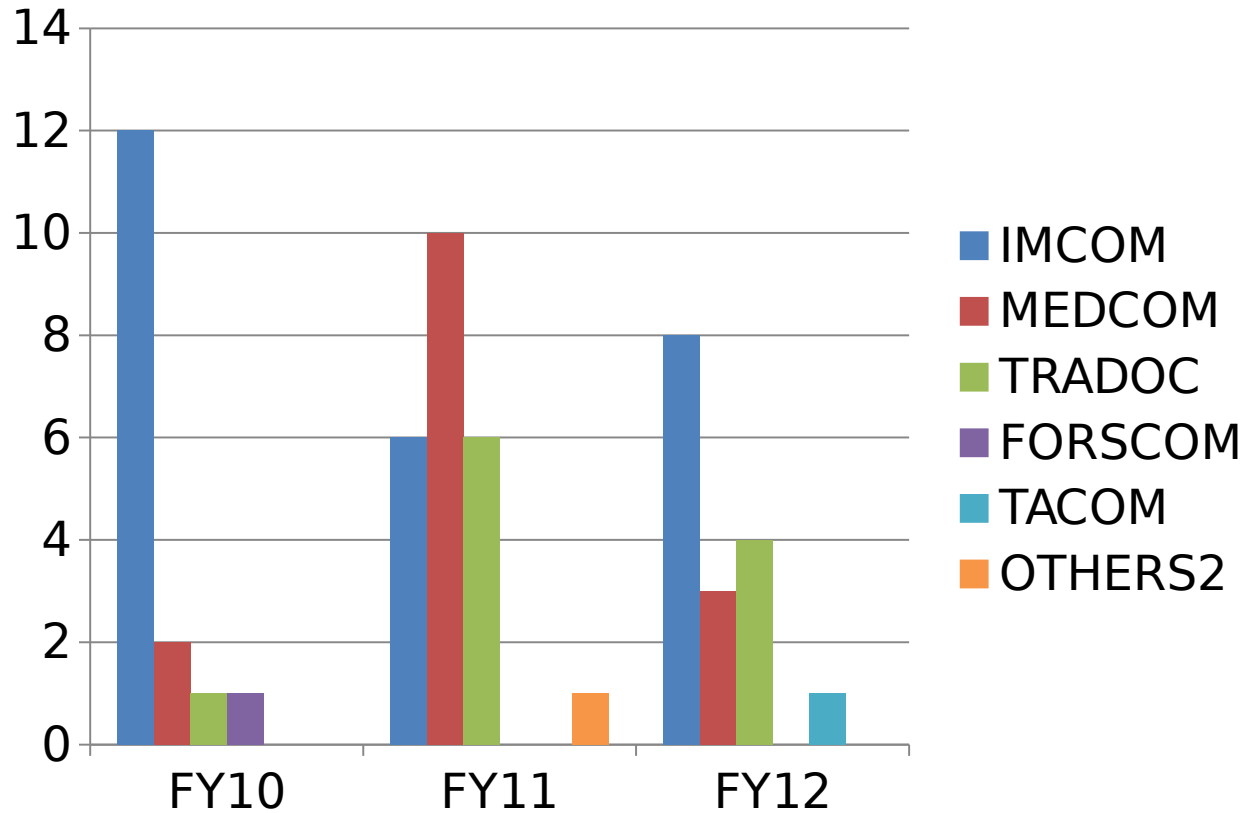


# ISSUES FOR FORMAL COMPLAINTS





# COMPLAINTS BY COMMAND





# WORK FORCE PROFILE



Participation rates in Current workforce									
Series	White Female	Hispanic		Black		Asian		American Indian	
		M	F	M	F	M	F	M	F
1712-Training Instruction Total: 506 Male: 469 Female 37	25 4.94 58.20%	5 0.98% .040%	0 0.00% 0.80%	58 11.5% 3.30%	10 1.97% 5.70%	3 0.59% 0.70%	1 0.19% 0.90%	7 1.38% 0.60%	0 0.00% 0.70%
301- Miscellaneous Administration Total 259 Male 201 Female 58	47 18.14% 0.00%	5 1.93% 0.00%	1 0. 38% 0.00%	15 5.79% 0.00%	6 2.31% 0.00%	4 1.54% 0.00%	3 1.15% 0.00%	3 1.15% 0.00%	0 0.00% 0.00%
303 Miscellaneous Clerk and Assistant Total 208 Male 100 Female 108	85 40.86% 61.90%	4 1.92% 0.30%	4 1.92% 1.30%	16 7.69% 2.30%	12 5.76% 10.4%	1 0. 48% 0.10%	2 0.96% 0.50%	2 0.9 6% 0.00%	2 0. 96% 0.00%
2005- Supply Clerical and Technician Total 137 Male 83 Female 54	33 24.08% 48.50%	2 1.45% 0.00%	2 1.45% .060%	10 7.29% 0.00	16 11.67 % 16.9%	1 0.72% 0.00%	2 1.45% 0.00%	0 0.00% 0.00%	0 0.00% 0.00%
203- Human Resource Assistant Total 133 Male 35 Female 98	63 47.36% 64.30%	2 1.50% 0.00%	5 3.00% 040%	4 3.00% 4.00%	23 17.29 % 19.9%	0 0.00% 0.00%	1 75% .40%	1 75% 0.00%	1 75% 0.00%

Expected number or greater (based on CLF)

Below expected number & within 2 standard deviations

More than 2 SD below the expected number

Version





# WORK FORCE PROFILE BY DISABILITY



**Table B6-1: PARTICIPATION RATES FOR MAJOR OCCUPATIONS  
Distribution by Disability  
(FTLEONWD, FY 2011)**

Job Title/Series		Total Employees	Detail by Disability Status				Expected # Targeted Disability (@2%)
			(05) No Disability	(01) Not Identified	(06 - 94) Disability	Targeted Disability	
1712 -TRAINING INSTRUCTION	#	56	951	15	37	0	0
301-MISCELLANEOUS ADMINISTRATION	#	259	105	3	13	0	0
303-MISCELLANEOUS CLERK AND ASSISTANT	#	208	217	4	19	1	1
2005-SUPPLY CLERK AND ADMINISTRATION	#	137	396	3	12	1	1
203-HUMAN RESOURCE ASSISTANCE	#	133	423	13	52	2	2
TOTALS	#	2263	2107	38	133	4	4
TOTALS	%	100%	93.1%	1.68%	5.88%	0.18%	
Goal	%					2.0%	
1712 -TRAINING INSTRUCTION	%	100%	94.81%	1.49%	3.68%	0%	0%
301-MISCELLANEOUS ADMINISTRATION	%	100%	86.77%	2.47%	10.74%	0%	0%
303-MISCELLANEOUS CLERK AND ASSISTANT	%	100%	90.41%	1.66%	7.91%	0.41%	0%
2005-SUPPLY CLERK AND ADMINISTRATION	%	100%	96.35%	0.72%	2.91%	0.24%	0%
203-HUMAN RESOURCE ASSISTANCE	%	100%	86.68%	2.66%	10.65%	0.40%	0%



# HOT TOPICS



## Preventative Measures

- Policy Letters
- Professional Development
- New Supervisory Training
- Expert advise to management and employees
- Coordination with CPAC/SJA/EEO on all actions



# Leadership and EEO

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- Do the right thing
- Make decisions based on merit and ability for legitimate, non-discriminatory reasons
- Be diligent in carrying out your duties, free of discrimination, even when faced with an EEO complaint



# QUESTIONS?



# Personnel

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Wanda T. Williams      Administrative  
Assistant

Taataai F. Taufetee      Complaints  
Manager

Disability Program

Manager  
Jennifer S. Thompson  
Director

5/25/17

53

Version

Date/Time/Group